IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1029 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

SURYAKANT DAHYABHAI AMIN

Appearance:

Mr.K.P. Rawal, APP for the appellant

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 02/12/2000

ORAL JUDGEMENT

1. The State of Gujarat, by filing this appeal for enhancement of sentence, has challenged judgment and order dated September 14, 1988 passed by the learned Judicial Magistrate (First Class), Karjan, in Criminal

Case No.188 of 1987, by which judgment and order, the learned Judicial Magistrate (First Class) convicted the respondents under Sections 408 and 477A of the Indian Penal Code and, on their accepting plea of guilty, sentenced respondent No.1 to imprisonment till rising of the court and fine of Rs.750/- for each offence in default simple imprisonment for 30 days. Respondents Nos.2 and 3 were sentenced to imprisonment till rising of the court and fine of Rs.250/- for each offence in default simple imprisonment for 30 days.

2. Respondent No.1 was the President of Kandari Cooperative Society ('Society' for short) in the year 1985 whereas respondents Nos.2 and 3 were serving as Secretary and Storekeeper of the said Society at the relevant point of time. As per the prosecution case, the respondents had abetted each other in causing financial loss in the sum of Rs.3,17,391/- by creating false bills of insecticides and without entering stock of insecticides in the books of account, they had sold it in the market. It was further prosecution case that respondent No.3 at the relevant time was Storekeeper of the Society and he had committed criminal breach of trust in wrongly creating documents and vouchers to help respondents Nos. 1 and 2 and had committed offence punishable under Sections 408, 477-A read with 114 of the Indian Penal Code.

3. From the record of the appeal, it appears that the Society had filed Lavad Suit No.1118 of 1987 in the Court of Board of Nominees, Vadodara, wherein a compromise was arrived at between the Society and respondent No.1. It was agreed that respondent No.1 shall pay an amount of Rs.5,09,416 by instalments, viz., Rs.50,000/- per year for the first two years and Rs.70,000/- per year thereafter. In pursuance of the compromise arrived at between respondent No.1 and the Society, the case against respondents Nos. 2 and 3 was not pressed. In view of the compromise arrived at between respondent No.1 and the Society, the respondents, at the time of recording plea, pleaded guilty and the learned Magistrate had accepted plea of guilty and had imposed sentence, which has been stated above.

4. The State of Gujarat has challenged the order of the learned Judicial Magistrate (First Class), of accepting the plea of the respondents and imposing minor punishment on each of the respondents and has prayed to enhance the sentence to be imposed on each of the respondents.

5. I have heard Mr. K.P. Rawal, learned Additional Public Prosecutor appearing for the appellant. I have gone through record and proceedings of the case and the compromise arrived at between the Society and the respondents in Lavad Case No.118 of 1987. The plea of respondents was voluntary and, having been satisfied by the said plea, the learned Magistrate has imposed minor punishment on each of the respondents. The learned Magistrate, while imposing minor punishment on the respondents, has given cogent and convincing reasons. In my view, the learned Magistrate has rightly exercised the discretion vested on him. In view of the compromise arrived at between the Society and the respondents, the respondents had voluntarily pleaded guilty to have committed the offences in question. In my view, this was the case for plea of bargaining and the Society was reimbursed with the amount so defalcated by the respondents. The learned Magistrate has rightly exercised the discretion and imposed minor punishment on each of the respondents. In view of the abovestated reasons, in my view, no case is made out by the appellant to enhance the punishment imposed on the respondents.

6. For the foregoing reasons, I do not find any substance in the appeal. The appeal, therefore, fails and is dismissed.

(M.H.Kadri, J.)

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(swamy)